Triangle Sheet Metal Works Division of P & F Industries, Inc.; Interstate Enclosure Mfg., Co., Inc.; Modulaire Components Corp. *and* Earl Patrick and Local 137, Sheet Metal Workers International Association, AFL-CIO, Party to the Contract

Triangle Sheet Metal Works, Inc. *and* Local 28, Sheet Metal Workers International Association, AFL-CIO. Cases 29-CA-5228, 29-CA-5400, 29-CA-5097, 29-CA-5353, and 29-CA-5388

26 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 27 March 1981 Administrative Law Judge Julius Cohn issued the attached Supplemental Decision in this proceeding.[1] Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, and hereby orders that the Respondent, Triangle Sheet Metal Works Division of P & F Industries, Inc., New Hyde Park, New York; Interstate Enclosure Mfg., Co., Inc., College Point, New York; and Modulaire Components Corp., College Point, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER JENKINS, concurring in part and dissenting in part:

Unlike my colleagues, I would find that as part of the "make whole remedy," Respondent is obligated to reimburse the Union for its payment of medical claims on behalf of discriminatees Henry Pinto and Bissodath Maharaj. For much the same reasons, I would require Respondent to reimburse discriminatees Pinto and John Cutrone for their personal contributions to their interim employers' health insurance plans.

The record shows that the Union paid medical claims for Pinto and Maharaj between October 1976 and April 1977. It has been the Board's policy to order reimbursement to a union's health and welfare fund of the premiums that Respondent would have paid absent its discriminatory conduct for the period that any of the discriminatees received services from the fund. *Am-Del-Co, Inc.*, 234 NLRB 1040 (1978). Therefore, it seems only fair, and in accord with Board policy, to order the fund reimbursed to the extent of the premiums which Respondent would have paid under the collective-bargaining agreement during the quarters in which Pinto and Maharaj actually received services from the fund and I see no justifiable reason for our deviation from this policy.

The record also shows that two employees, Pinto and John Cutrone, were required to make personal contributions to their interim employers' health insurance plans. Respondent's contractual health and welfare coverage with the Union did not require employees to make personal contributions. I would require Respondent to make reimbursement to these employees for any health insurance payments they may have made to other medical insurance plans while they were engaged in their interim employment because absent their unlawful layoff, they would not have been deprived of coverage under the Union's health and welfare fund, nor would they have had to make personal contributions. *Atrim Transportation System*, 193

---

[1] The Board's original Decision and Order in Cases 29-CA-5228 and 29-CA-5400 is reported at 237 NLRB 364 (1978). The original Decision and Order in Cases 29-CA-5097, 29-CA-5353, and 29-CA-5388 is reported at 238 NLRB 517 (1978).

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We disagree with our concurring colleague that we should modify the Administrative Law Judge's recommended backpay award to require Respondent to make payments to health funds for medical claims the funds paid for some discriminatees. Contrary to our colleague, we do not consider it customary for the Board to order that payments be made to health funds as part of a make-whole remedy for individual discriminatees when the individuals have not sustained a loss because of lack of coverage by the funds. We consider the *Am-Del-Co, Inc.*, 234 NLRB 1040 (1978), case, cited in the concurring opinion, to be distinguishable, as it involved unlawful conduct in addition to discrimination against individuals; i.e., conduct directed at modification or elimination of a bargaining contract.

We also disagree with our colleague's proposal to require Respondent to pay two discriminatees for medical coverage they maintained during interim employment, as the backpay specification did not include such payments and exceptions were not filed to the Administrative Law Judge's failure to require the payments.

NLRB 179 (1971); *Operative Plasterers Local 90 (Southern Illinois Building Assn.)*, 252 NLRB 750 (1980). Although these sums were not alleged in the backpay specification and no exceptions were taken to the Administrative Law Judge's failure to order restitution by either party, there is sufficient testimony in the record to support the conclusion that some moneys are due and owing.[4] Moreover, it is the Board's established policy to order restoration of the *status quo ante* to the extent feasible where there is no evidence that to do so would impose an undue or unfair burden on Respondent.[5] I find, therefore, that in order to effectuate fully the original Order in this matter and to remedy most appropriately Respondent's unfair labor practice, the discriminatees should be placed in the position in which they would have been but for Respondent's unlawful layoff.

Accordingly, I would remand this proceeding to the Administrative Law Judge for the limited purpose of ascertaining the amount of premiums, during the relevant period, that Respondent would have to reimburse Local 282's health and welfare plan and the amount of personal contributions that Pinto and Cutrone incurred for which they are entitled to recover from Respondent.

In all other repects, I am in agreement with my colleagues.

[4] Even though the record testimony on this matter is sufficient to conclude that some sums are due, it is insufficient to determine with any degree of specificity, the amounts, if any, that these two discriminatees are entitled to receive.

[5] *Allied Products Corp.*, 218 NLRB 1246 (1975); *Famet, Inc.*, 222 NLRB 1180, 1184 (1976).

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JULIUS COHN, Administrative Law Judge: On August 10, 1978, the National Labor Relations Board issued its Decision and Order (237 NLRB 364), directing, *inter alia*, Triangle Sheet Metal Works, Division of P & F Industries, Inc.; Interstate Enclosure Mfg. Co., Inc.; Modulaire Components Corp., herein called Respondent, to make whole certain employees for their losses resulting from the unfair labor practices found to have been committed by Respondent. On May 1, 1979, the Board's Decision and Order was enforced by the United States Court of Appeals for the Second Circuit.

On September 27, 1978, the Board issued its Decision and Order in Cases 29-CA-5097, 29-CA-5353, and 29-CA-5388 (238 NLRB 517), directing Respondent to reinstate and make whole Glen Langstaff for his losses resulting from Respondent's unfair labor practices. On June 18, 1979, the U.S. Court of Appeals for the Second Circuit enforced the Board's Order. The parties, being unable to agree on the amount of backpay due to employees, and amounts due to certain employees from whom dues were deducted on behalf of Local 137, Sheet Metal Workers International Association, AFL-CIO, under the terms of the Board's Orders, the Regional Director for Region 29 issued a backpay specification, dated August 31, 1979. Thereafter on November 16, 1979, the Regional Director issued an order amending the said backpay specification. Respondent filed an answer and an amended answer thereto.

A hearing was held before me at Brooklyn, New York on January 14, 15, 30, and 31, February 1, 14, 15, and March 24, 1980. Briefs, which have been carefully considered, have been received from the General Counsel and Respondent. Upon the entire record in the case, and on my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. BACKGROUND

In the Patrick[1] case, the Board's Order as enforced by the court provided for reinstatement of five employees and directed Respondent to make them whole for any loss of earnings they may have sustained by reasons of its discrimination.[2] In the so-called Langstaff case, the Board ordered the same remedy for Langstaff.

Respondent had pleaded in the underlying proceeding that the five employees involved in the Patrick case were laid off in seniority order for economic reasons. While the Board found that Respondent's business had sustained economic losses, it held, nevertheless, that the five employees had been laid off or terminated for unlawful discriminatory reasons.

In both of the instant proceedings, Respondent contends that, as a result of continued economic reverses, none of the five employees in the Patrick case are entitled to backpay since no work would have been available for them in view of their low seniority. Similarly, as to Langstaff, it contends that during major portions of the backpay period set forth in the specification, there also would not have been work available. This major contention and others will be dealt with in order.

In addition, the General Counsel contends that Respondent had an obligation to make contributions to the pension and health and welfare funds of Local 282, Teamsters, under whose contract with Respondent, the five discriminatees in the Patrick case were employed. Again the same contention is made on behalf of Langstaff for contributions to those funds and also the vacation fund of Local 28, Sheet Metal Workers International Association AFL-CIO.

Finally the General Counsel seeks reimbursement of union dues and fees checked off from some 22 employees pursuant to Respondent's collective-bargaining agreement with Local 137, Sheet Metal Workers. These payments are sought pursuant to the Board's Order in the Patrick case and are essentially not contested herein.

[1] The Charging Party in Cases 29-CA-5228 and 29-CA-5400.

[2] The five employees are: Henry Pinto, Bissoondath Maharaj, Krishna Maharaj, John Cutrone, and George Nieto.

II. THE METHOD OF COMPUTATION

In the Patrick case, the Regional Office computed the gross backpay by utilizing in the rate of pay earned by each of the discriminatees at the time of his termination adjusted for increases in accordance with the collective-bargaining agreement Respondent and Local 282. The same method of computation was applied to Langstaff utilizing the rates set forth in the collective-bargaining agreements between Respondent and Local 28.

A discriminatee is entitled to receive what he would have earned had he remained in the Company's employ, less his interim earnings. This is a broad principle not simple in its application. There is no formula that would measure an exact figure since the discriminatees did not actually work during the period. Therefore "the Board is vested with a wide discretion in devising procedures and methods which will effectuate the purposes of the Act." *NLRB v. Brown & Root*, 311 F.2d 447, 452 (1963). I find that the formula used herein is reasonable and proper and, in any case, is not contested by Respondent.

III. CONTENTIONS APPLICABLE TO MORE THAN ONE CLAIMANT

A. *The Discriminatees Would Have Had No Work for Economic Reasons*

As to the five employees in the Patrick case, Respondent, having contended in the underlying proceeding that they had been terminated for economic reasons, an argument rejected by the Board, asserts herein that a continuing and deteriorating economic situation had in effect done away with their jobs in any case, so that reinstatement would have been unavailable to them during the backpay period. It is well settled that such a contention is an affirmative defense and the burden is on Respondent to establish that discriminatees would not have remained in its employ, nor was substantial equivalent employment available to them for nondiscriminatory reasons.[3] Statistical probability is not enough and it must be determined what would have occurred regarding the employment of the claimants based on the policies of Respondent. Respondent must make the showing and mere conclusions are not sufficient.[4]

The findings of the Board in the Patrick case negate this contention. The five discriminatees were laid off on various dates commencing August 13 until September 17, 1976. The Board found that their work was thereafter performed by Local 137 members at College Point at a lesser wage rate.[5] At another point, the Administrative Law Judge found that Interstate had reopened on September 30 without any rank-and-file employees, but immediately began hiring that day from men referred to it from Local 137.[6] No evidence has been presented herein as to who these employees were and how long they were employed and presumably they replaced in part the discriminatees herein. Another finding was made that a representative of Respondent, in discussions with Patrick concerning the layoff, offered to reinstate the discriminatees except Krishna Maharaj, provided they joined Local 137. It was further found that the new employees at Respondent's College Point facility, working under the Local 137 contract, did the work formerly performed by the Local 282 members. Finally, the Board found that B. Maharaj, Nieto, and Cutrone had been offered reinstatement at a lower rate of pay. Based on these findings of the Board with respect to the employment situation at Respondent subsequent to the layoffs, I find, contrary to Respondent's contention, that there was work available for the discriminatees during the backpay period.

Respondent has made a similar argument with respect to employment opportunities for Langstaff during the backpay period at its plant which will be discussed individually in connection with his claim.

B. *Pension Benefits*

The General Counsel contends, as provided in the backpay specification, that Respondent be required to make pension payment contributions directly to the Local 282 pension fund on behalf of four of the discriminatees in the Patrick case, and to Local 28 on behalf of Langstaff. Respondent generally opposes.

Respondent's contract with Local 282 provided that effective July 1, 1978, Respondent will pay a standard hourly payment to the Local 282 pension trust. In addition Respondent's contract with Local 28 provided for payments to a pension fund according to a fixed schedule effective during Langstaff's backpay period. At the hearing the parties stipulated that the amounts, which would be due under the provisions of both these funds, as set forth in the backpay specification and amendment thereto are accurate.

In a thoroughly reasoned decision on the subject, approved by the Board, in *Sioux Falls Stock Yards Co.*, 236 NLRB 543 at 546 (1978), Administrative Law Judge Schawarzbart found proper that contributions by the respondent therein should be paid directly to the pension fund even though former employees may not be benefited directly since they had not obtained vested pension rights. Considered in that decision were a variety of defenses, not pleaded herein, that such payments might be considered a windfall or that the payments or contributions might be unlawful under Section 302 of the Act. Indeed it was found that such payments in certain circumstances could survive the expiration of the contract. Accordingly, I find on the basis of established law, that Respondnt herein is obligated to make the contributions to the pension funds of both unions, Local 282 and Local 28, as set forth in the backpay specification.[7]

C. *Welfare Benefits*

The General Counsel contends that Respondent is obligated to make contributions to the welfare funds, as provided in both the Local 282 and Local 28 contracts,

[3] *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170 (2d Cir. 1965).
[4] *Nabors Co.*, 134 NLRB 1078, 1088 (1961).
[5] *Triangle Sheet Metal Workers Division, supra*, 237 NLRB at 369.
[6] *Id.* at 370.

[7] Respondent will not be required to make any payment to the Local 282 pension trust on behalf of John Cutrone, for the reason that his backpay period ended on April 3, 1978, and Respondent was not contractually bound to make any pension trust contribution until July 1, 1978.

for the respective backpay periods of the claimants. On the other hand, Respondent opposes on the ground that it has not been shown that any of the terminated employees sustained any loss by reason of their not being covered under the welfare funds. I find merit in this contention of Respondent.

It is well settled that Respondent would be liable for any expenses incurred by the discriminatees during their respective backpay periods had their health and welfare insurance coverages been permitted to lapse.[8] The testimony of several of the discriminatees indicated that during their backpay period they had applied for and received medical expenses benefits from the Local 282 fund. There is no testimony or other evidence showing that any of the discriminatees sustained losses which would have fallen under the insurance coverage provided in the collective-bargaining agreements. As stated in *Sioux Falls Stock Yards, supra* at page 548, "Respondent, by not continuing the premium payments, had placed itself in the role of a self-insurer in maintaining the life insurance program, and employees who are not otherwise adversely affected have no claim to those preminum payments as the Respondent, however involuntarily, assumed the risk." While Respondent undoubtedly has the burden of proof with respect to the existence of facts in litigating its backpay liability,[9] such as medical and other claims covered by the welfare benefit plans, clearly the discriminatees would have to come forward and set forth the substance of their claim. Simply requesting Respondent to pay premiums for the backpay period is not sufficient in this instance. Accordingly, I find Respondent not liable for payments to the welfare benefit plans of Local 282 and Local 28, as set forth in the amended specification.

D. *Vacation Contributions*

The backpay specification makes claim for contributions on behalf of Langstaff to be paid to the Local 28 vacation fund. It is well settled that the vacation pay is properly included in a backpay award.[10] The same of course would hold true for a contractual provision, as in this case, which provides for vacation payments to employees through the mechanism of a vacation fund maintained and set up as a result of the collective-bargaining agreement. Accordingly I shall add the amount of contributions that would have made during the backpay period on behalf of Langstaff, the accuracy of these amounts as set forth in the specification being stipulated, to any backpay award that will be ultimately made to him. The vacation fund contributions will be paid to the Local 28 vacation fund of the Union directly.

E. *Reimbursement of Union Dues*

The Board Order in the Patrick case also provided for reimbursement to employees of all initiation fees and dues paid or checked off pursuant to the collective-bargaining agreement with Local 137, Sheet Metal Workers, from October 1976 to August 1978. The amounts due under this Order and the employees to whom such reimbursement shall be made by Respondent have been stipulated as correct by the parties at the hearing. Accordingly, I shall recommend that these payments be made to employees in the amounts as set forth in Appendix E of this Decision.

F. *Willful Loss*

As to all of the claimants, Respondent takes the position that they did not make proper and sufficient efforts to obtain employment, that they were willfully idle and incurred a willful loss of earnings. It has been long established that willful loss of earnings is an affirmative defense and the burden is on the employer "to establish facts which would negate the existence of liability to a given employee or which would mitigate that liability."[11] The rule has been set forth in *Aircraft & Helicopter Leasing & Sales*,[12] as follows:

> An employer may mitgate his backpay liability by showing that a discriminatee "willfully incurred" loss by a "clearly unjustifiable refusal to take desirable new employment (*Phelps Dodge Corporation v. N.L.R.B.*, 313 U.S. 177, 199-200 (1941)), but this is an affirmative defense and the burden is upon the employer to prove the necessary facts. *N.L.R.B. v. Mooney Aircraft, Inc.*, 366 F.2d 809, 813 (C.A. 5, 1966). The employer does not meet that burden by presenting evidence of lack of employee success in obtaining interim employment or of low interim earning; rather the employer must affirmatively demonstrate that the employee "neglected to make reasonable efforts to find interim work. *N.L.R.B. v. Miami Coca-Cola Bottling Company*, 360 F.2d 569, 575-576 (C.A. 5, 1966). Moreover, although a discriminatee must make "reasonable efforts to mitigate [his] loss of income . . . [he] is held . . . only to reasonable exertions in this regard, not the highest standard of diligence." *N.L.R.B. v. Arduini Manufacturing Co.*, 395 F.2d 420, 422-423 (C.A. 1, 1968). Success is not the measure of the sufficiency of the discriminatee's search for interim employment; the law "only requires an honest good faith effort." *N.L.R.B. v. Cashman Auto Company*, 223 F.2d 832, (C.A. 1). And in determining the reasonableness of this effort, the employee's skill and qualifications, his age, and the labor conditions in the area are factors to be considered. *Mastro Plastics Corp.*, 136 NLRB 1342, 1359.

The test to be applied as to whether a discriminatee made a reasonable search for employment is whether he "diligently sought other employment during the entire backpay period," based on the record as a whole. In this connection it is not required that he looked for employment immediately, or in each and every quarter of the backpay period.[13] Other applicable principles will

[8] *Rice Lake Creamery Co.*, 151 NLRB 113, 1129 (1965), enfd. 365 F.2d 888 (D.C. Cir. 1966).

[9] *NLRB v. Brown & Root, supra.*

[10] *Avon Convalescent Center*, 219 NLRB 1210, 1214 (1975).

[11] *NLRB v. Brown & Root, supra* at 454.

[12] 227 NLRB 644, 646 (1976).

[13] *Cornwell Co.*, 171 NLRB 342, 342-343 (1968).

appear in connection with contentions made by Respondent as to specific claimants.

G. *Area Employment Opportunities*

Respondent was permitted to adduce oral testimony, in lieu of voluminous exhibits, to the effect that the local newspapers contained many classified advertisements indicating that employment opportunities existed during the backpay period for these discriminatees. Respondent urges that since it did not appear that the claimants herein had applied for the jobs advertised in the papers and, in some cases, did not even consult the newspapers, therefore they did not make a reasonable effort to obtain interim employment. In addition a witness for Respondent, a proprietor of an employment agency, testified that particularly with respect to Langstaff, there were jobs available for referral through his agency and that Langstaff did not apply.

The Board has held with respect to newspaper advertisements that it is necessary to show that these advertised jobs were offered to one of the discriminatees who then refused or rejected it.[14]

Similarly with respect to the testimony of the employment agency official that Langstaff or other discriminatees had not applied for work at his agency, the Board has held the fact that an employer hired a number of employees during the backpay period, or as applicable to the instant case, that an agency has referred applicants to numerous jobs is of no effect as to the issue of whether any specific discriminatees would have obtained employment if they had applied.[15] With regard to these matters, the test, as above noted, is whether each claimant made diligent and reasonable search for employment or whether he incurred willful losses.

IV. THE CLAIMANTS

A. *Henry Pinto*

Pinto had been employed as a warehouseman under the Local 282 contract at the New Hyde Park facility. His backpay period ran from August 13, 1976, to August 25, 1978. Upon his termination, Pinto sought and obtained employment within 2 weeks and was employed steadily throughout the backpay period. With this record, no claim of willful loss can be sustained as to Pinto.

However at the hearing, the testimony and exhibits developed certain substantial adjustments that must be made to Pinto's claim as set forth in the backpay specification. Primarily the rates of pay utilized in the preparation of his claim in the specification are patently incorrect. Although the rates which prevailed under the Local 282 contract during the approximately 2 years in question are set forth in the contract by the name of the specific employee involved, this was not the case with Pinto, a relatively new employee. Nevertheless the agreement does particularize the pay rates he was to receive. Thus I have adjusted the gross backpay figures by quarter in accordance with the correct pay rates applicable to Pinto. At the time of his layoff he was earning $3.75 an hour. The contract provided for a raise to $4.50 an hour as of September 15, 1976, and another to $5.50 an hour as of September 15, 1977. His gross backpay has been recomputed by quarter to reflect these rates.

In addition the gross backpay was decreased to account for a number of days within the backpay period that the plant was entirely shut down. This, according to the uncontradicted testimony of Benjamin Silverstein, an officer of Respondent, amounted to a total of 21 days, of which 8 days occurred in the fourth quarter of 1976, 5 days in the first quarter of 1977, one day in the third quarter of 1977, 5 days in the first quarter of 1978, and 2 days in the third quarter of 1978. There were also 2 weeks, one ending September 30, 1977, the third quarter of that year, and the following week ending October 7, in the fourth quarter, during which the plant was open with only two warehousemen, and there would have been no work available for Pinto since he was the last man on the seniority list. Adjustments were also made to reduce the mileage expense set forth in the specification for the days the plant was closed and the weeks there was no work available for Pinto.

The foregoing adjustments and changes were made for the quarters in which they occurred so that the total net backpay set forth for Pinto in Appendix A is found to be $5,037.07.

B. *Bissoondath Maharaj*

The backpay period of B. Maharaj ran from September 30, 1976, until August 25, 1978. He had no interim earnings during this period except the sum of $50 which he received for washing somebody's car for some time. Respondent contends that B. Maharaj should not be entitled to backpay as he made little or no effort to obtain employment and thereby sustained a willful loss.

Although, as noted above, there is ample authority that the failure to obtain employment during a backpay period by itself is not sufficient to establish willful loss,[16] other factors such as the reasonableness of the effort to obtain employment and mitigate loss of income must be considered.

In this case, B. Maharaj testified at two points that he did not look for a job until July 1977 when his unemployment benefits ceased. While the requirement to remain eligible for unemployment benefits has been held to be sufficient to satisfy the requirements to remain eligible under the Act,[17] it is still necessary that a claimant diligently pursue employment. In this situation Maharaj admitted that he did not seek employment until the end of June 1977 when his unemployment benefits eligibility ran out. In these circumstances, I find that B. Marahaj did sustain a willful loss and he shall be denied backpay from the time of his layoff until July 7, 1977 when his unemployment benefits ended and he began to seek employment.

[14] *Florence Printing Co.*, 158 NLRB 775, 777 (1966); *Sioux Falls Stock Yards, supra* at 550.

[15] *Firestone Synthetic Fibres Co.*, 207 NLRB 810 (1973).

[16] *Amshu Associates*, 234 NLRB 791 (1978).

[17] *J.H. Rutter-Rex Mfg. Co.*, 194 NLRB 19, 24 (1971).

The record shows that commencing July 7, 1977, Maharaj sought employment at various places of business on the average of two or three times a month until March 15, 1978. Thereafter there is no evidence concerning continued efforts on his part to find a job. Accordingly, I find that he is entitled to backpay for the period commencing July 7, 1977, through March 15, 1978, as set forth in Appendix A annexed hereto. In this connection I find Respondent's contention that B. Maharaj did not visit employment agencies or pursue newspaper advertisements to be without merit, as discussed above. However, as noted, since there is no evidence of his looking for work after March 15, 1978, I shall not award backpay from that date until August 25, 1978, when the backpay period ended.[18]

C. *Krishna Maharaj*

Krishna Maharaj had been employed prior to his unlawful termination at the College Point facility of Respondent as a warehouseman and was covered by the Local 282 contract. His backpay ran from September 3, 1976, until August 25, 1978, when the College Point facility was closed down.

Respondent's contention with regard to K. Maharaj is based mainly on the fact that Maharaj did not obtain any employment during the entire backpay period and it is alleged he thereby sustained a willful loss of earnings.[19] The only evidence of K. Maharaj's attempts to find employment consists of a list submitted on the Board forms for this purpose to the General Counsel. This contained the names and addresses of employers to whom he applied during the period from September 14, 1976, through May 3, 1977. Since there is no evidence to the contrary, I find that Maharaj did seek employment during that interval. Accordingly, I shall award him backpay for the amounts set forth in the specification for the third and fourth quarters of 1976, the first quarter of 1977, and 5 weeks of the second quarter of 1977.

As to the balance of the backpay period, there is no evidence or credible testimony as to the efforts made by K. Maharaj to seek further employment. He did not list any other places that he visited. Despite prompting by the General Counsel he was unable to testify as to any names of employers to whom he applied. He expressly stated he could not remember names or places or when he had gone, even with respect to those on the abbreviated list he submitted. He said that he kept records of employers to whom he had applied but was unable to furnish such record. Indeed he testified he did not look for work from May 1977 until he was recalled in April 1978, except to visit the Union once a week. He said that the Union did not refer him to any positions. In this connection it is noted that Local 282 does not maintain a hiring hall. In addition an official of that Union testified he could not recall more than four contacts with K. Maharaj for any purpose. In the circumstances I do not credit Maharaj with respect to his seeking employment through the Union, even if such efforts would be deemed sufficient in these matters. I shall therefore limit his entitlement to the period of time described above and as specifically set forth in Appendix A of this Decision.

D. *John Cutrone*

Cutrone's backpay ran from September 17, 1976, until April 3, 1978, when he refused an offer of reinstatement. Respondent argues that Cutrone is not entitled to any backpay because there would have been no work available for him this period. It bases this contention on the fact that Cutrone, a maintenance mechanic, was originally hired as a replacement for a senior employee who had left in 1973 for a long leave of absence. When this employee returned, Cutrone remained while the returnee completed some long deferred maintenance work for which he was the only qualified mechanic. When this work was apparently concluded at the beginning of the summer of 1976, it is alleged that Cutrone was further retained to fill in during the summer vacation. In this connection Respondent also argues that historically only two employees were kept for maintenance work. At the conclusion of the summer and on September 17 Cutrone was laid off, allegedly for lack of work. The obvious defect in this argument is that the Board has found Cutrone was discriminatorily laid off in violation of the Act and not, as contended here by Respondent, for lack of work. The Board thus ordered him reinstated with backpay. In view of the clear finding of the Board and its Order, I cannot find merit to Respondent's argument that Cutrone could not have been employed by reason of lack of work.

Respondent further urges that Cutrone should not be the recipient of backpay because of his alleged willful loss of earnings. The record shows that Cutrone was unemployed for approximately 9 months and then obtained employment and worked steadily thereafter until the end of the backpay period. According to his testimony he reported regularly to New York State Division of Unemployment and was interviewed by that office several times for employment but did not obtain anything. In addition it appears that he looked for jobs at employers in the Long Island area and filed applications for maintenance work at several of the airlines located at Kennedy Airport and hospitals and the like. The fact that he did not apply to the employment agency operated by one of Respondent's witnesses clearly does not disqualify him from receiving backpay. I find in the circumstances that Respondent has not fulfilled its burden of showing that Cutrone sustained a willful loss of earnings during the backpay period.

I have adjusted the gross backpay figures as set forth in the specification to account for the days during which the plant at New Hyde Park was closed and when Cutrone would not have had work in any case. Thus I have deducted from the gross backpay earnings at the rates in effect at the time for 9 days during the fourth quarter of 1976, 5 days in the first quarter of 1977, 1 day of plant

[18] The backpay awarded to B. Maharaj was computed on the basis of the Local 282 rates as was done in the case of Pinto, and not on the basis of the erroneous wage rates contained in the backpay specification.

[19] Respondent recalled K. Maharaj to a job at the New Hyde Park plant on April 3, 1978, and then laid him off again on May 5. As he had not been reinstated to his job at College Point or transferred there when work was no longer available at New Hyde Park, the General Counsel treated the earnings for this approximate period of 1 month as interim earnings.

closing and 1 week when he would not have worked during the third quarter of 1977, 1 week similarly in the fourth quarter of 1977, and 3 days in the first quarter of 1978. Having credited these items I find the total net backpay due to Cutrone to be $13,047.02 as set forth in Appendix A annexed hereto.

E. *George Nieto*

Nieto did not appear and testify at the hearing despite the attempts of the General Counsel to subpoena him. However, there is no rule requiring the General Counsel to produce all backpay claimants for examination by respondents. The Board has stated, "[I]t is well established that the burden is on Respondents to prove that a claimant willfully incurred loss of earnings during his backpay period, or for some other reason is not entitled to receive backpay for the period of discrimination."[20] But in these circumstances, Respondents have not had an opportunity to examine the claimant with respect to his interim earnings. In accordance with the consistent Board policy,[21] I shall recommend that Nieto, who had been employed at College Point, be awarded the amount of gross pay set forth in the specification and that Respondent be ordered to pay it to the Regional Director to be held in escrow for a period not exceeding 1 year from the date of the Order to be entered herein. The Regional Director will be instructed to make suitable arrangements to afford Respondent, together with the General Counsel's representative, an opportunity to examine Nieto and any other witnesses with relevant testimony and to introduce any relevant and material evidence bearing on the amount of backpay due to Nieto. The Regional Director shall then make a final determination whether any interim earnings or other factors are revealed which may reduce the amount of backpay due under existing Board precedent. In the event the Regional Director determines that deductions are warranted, the amount so warranted shall be returned to Respondent. The Regional Director, when this matter has been finally resolved, shall promptly and, no later than one year from the date of the Board's Order, report to the Board the status of the matter. Accordingly I shall award to Nieto the amount of backpay as alleged in the Specification and set forth in Appendix A.[22]

F. *Glen Langstaff*

Langstaff was found to have been discriminatorily laid off by the Board in the case brought by Local 28 and reported at 238 NLRB 517. Langstaff, a Local 28 member and a sheet metal mechanic at New Hyde Park, was laid off on July 2, 1976, and his backpay period ran until June 26, 1978, when he was reinstated.

Respondent contends that during the backpay period Frederick Zwerling, President of Respondent, made unconditional offers to Langstaff to return to work. Zwerling testified that in August 1976 he called a Joe Casey, recording secretary of Local 28 and offered to settle the whole case by taking back Langstaff, but not others.[23] He also told Casey that he would not pay any backpay but would agree to arbitration concerning it. Casey called him back and said that the Union President Reuckert would not agree to this offer.

Zwerling testified that he had two meetings with Langstaff about this. The first was about the third week of September 1976, in which he asked Langstaff why he did not accept the offer that had been made to the Union. He said Langstaff replied that he did not know about it. Zwerling said that this was a long conversation which lasted over an hour and became very emotional when he told Langstaff that he believed that the whole case was a political issue brought by Reuckert, and that he, Langstaff, was going to be the loser for it. Zwerling said he suggested taking the issue to an industry grievance procedure. Zwerling denied saying Langstaff would have to withdraw NLRB charges.

Zwerling stated he met again with Langstaff at the end of September or early part of October 1976 in his office. Zwerling said he asked Langstaff what his decision was and he replied he would not come back to work, because doing so would prejudice the case against the other nine men. Zwerling said he was making a big mistake and he was telling him he could come back to work and, if he did not, the loss would be his. Zwerling again denied telling Langstaff that he could come back to work if he dropped the charges. Zwerling maintained that, by the time, he knew "the only way the charges could be dropped would be with the consent of NLRB."

For his part, Langstaff testified he met three times with Zwerling and the point of departure from the testimony of Zwerling was to the effect that Langstaff insisted Zwerling had conditioned his offer of reinstatement to Langstaff on the withdrawal of the unfair labor practice charges.

In all the circumstances, I find that Respondent did not make an unconditional offer of reinstatement to Langstaff. Concededly its offer was not in writing and on the basis of Zwerling's own testimony, there does not appear to have been a specific outright offer of return. His language was always couched either in terms of the other charges or of the resolution of the backpay issue. As background for his account of his meetings with Langstaff, Zwerling testified he told plant superintendent Biegler to call Reuckert of the Union, to see if they could resolve the issue. He told Biegler that there was no way in the world that they were going to hire back all 10 men. He told Biegler "that we would be agreeable to hiring back Glen Langstaff if it would settle the issue." Zwerling himself then called Casey and told him

[20] *Brown & Root*, 132 NLRB 486, 495 (1961).

[21] *Controlled Alloy*, 208 NLRB 882 (1974).

[22] In its brief Respondent has urged that Nieto's gross backpay be reduced by the number of days in which the plant was closed. However Nieto was employed at College Point and an exhibit introduced by Respondent indicating the number of employees employed at College Point during the backpay period does not reveal the number of days, if any, that the plant was closed. To the contrary the exhibit shows that the plant did have employees working on the days set forth in the testimony of Silverstein with respect to the New Hyde Park plant. Silverstein's testimony further shows that the plant closing days to which he testified were applicable to New Hyde Park.

[23] The consolidated complaints in this case had alleged a total of 10 employees who were discriminatorily discharged, but the Board found a violation only as to Langstaff and dismissed the charges as to the other 9.

"we would take Mr. Langstaff back to work. We would not take the other men back."

In the underlying case, the Administrative Law Judge found that shortly after the charges were filed Zwerling had Superintendent Biegler call Reuckert and propose "that the Union drop the charges in return for reinstatement of Langstaff and Respondent's participation in negotiations . . . concerning an out-of-town addendum to the collective contract." Zwerling himself made another offer to Casey, "that in return for Local 28 dropping the charges, Respondent would rehire Langstaff" and agree to submit his layoff and backpay to arbitration procedures.[24] Local 28 rejected these offers.

Based on these findings as well as Zwerling's testimony herein, it appears that Zwerling was embarked on a policy to settle the whole case by offering to reinstate only Langstaff. It seems clear that such reinstatement was conditioned upon a resolution of the entire complaint. Finally upon being recalled to testify, Zwerling, in response to a question from the Administrative Law Judge, replied, "there was no way we could hire Langstaff back and cut off our total exposure without hiring the other nine men back." Such language is far from an unconditional offer of reinstatement, and is indeed implicitly conditioned on the withdrawal or settlement of the pending unfair labor practices. The Board has long held that attaching such a condition to an offer of reinstatement is not valid.[25]

For the above reasons, I find that Respondent did not make a valid offer of unconditional reinstatement to Glen Langstaff.

Respondent further urges that Langstaff would not have had work available to him during the backpay period, because of the economic situation which caused it to reduce its work force. However, the Board itself specifically found that Respondent was in a period of "economic decline."[26] It then proceeded to order Langstaff's immediate full reinstatement. Moreover, it has been pointed out that there was no seniority provision with respect to the sheet metal mechanics under the Local 28 contract. And, finally, as to Langstaff's ability, the Administrative Law Judge also specifically found as follows: "he was qualified to operate every machine in the shop, including those requiring special skills and training. He was also qualified as a cutter and a welder." Also in this hearing, Plant Superintendent Biegler testified to equal affect, that is, Langstaff was so qualified. I find, therefore, that Langstaff should have been reinstated to his former position in accordance with the Board Order, despite continued economic decline. Of course, adjustments should be made for days in which the plant was closed, or other similar circumstances.

Respondent contends that Langstaff sustained a willful loss since he had no earnings from employment for the last two quarters of 1976, and the first two quarters of 1977. During the latter half of 1977, Langstaff did have interim earnings as a result of his employment by Hyer Graphics Inc., a printing concern operated by his mother. He had further earnings with that company in the first quarter of 1978 and also in that quarter was employed for a short while at Swift Sheet Metal Corp. Thereafter, for the second quarter of 1978 until he was reinstated by Respondent, he had no interim earnings. Langstaff testified that after his termination he applied for unemployment compensation and reported to that office regularly seeking referral to a job but was not successful. He also said that he either went personally or telephoned the Union twice a week in an effort to obtain employment from the source. In addition, Langstaff testified that he visited a number of employers and shops including construction sites in his attempts to find employment. Langstaff had testified that, among others, he had visited a sheet metal shop named Alpine Sheet Metal and applied to a man named Doff, who appeared to be either the foreman or the owner. He said he had visited that shop perhaps four or five times. Respondent produced Doff as a witness who testified he had never seen Langstaff before his own appearance at the hearing. Doff also testified that during portions of Langstaff's backpay period there was work available generally in the industry, that he saw perhaps a hundred applicants each year, that his policy was to write their names or other information on slips of paper which he generally threw away within 2 years. He did not however state that he had a job available or would have hired Langstaff if he had applied. While this testimony may raise some doubt as to whether Langstaff had actually applied at Alpine, such doubt is to be resolved to the discriminatee's, not the wrongdoer's, benefit.[27] In any case there is other affirmative evidence, uncontradicted, that Langstaff did indeed seek work during the backpay period. I find, therefore, that Langstaff did not sustain willful loss of earnings.

However certain adjustments are in order with respect to the computation of backpay and interim earnings as set forth in the specification. Respondent and Local 28 had agreed during the fourth quarter of 1977, on certain reductions in the pay rates based upon an agreed formula, not here relevant. The hourly rates fluctuated approximately every 2 weeks and were apparently in effect from November 3, 1977, to at least the end of Langstaff's backpay period. Accordingly, I have adjusted and reduced the gross backpay as appears in the specification by $72.94 in the fourth quarter of 1977, $707.25 in the first quarter of 1978, and $503.30 in the second quarter of 1978.[28]

The Local 28 contract provided for nine holidays during a calendar year for which employees were not paid. The backpay specification does not take these into account and accordingly, I have reduced the gross backpay for holidays by $163.38 for the third quarter of 1976, $408.45 for the fourth quarter of 1976, $247.17 for the first quarter of 1977, $82.39 for the second quarter of 1977, $168.98 for the third quarter of 1977, $418.45 for the fourth quarter of 1977, $234.24 for the first quarter of 1978, and $78.94 for the second quarter of 1978.[29]

[24] 238 NLRB at 521.

[25] *Midwest Hanger Co.*, 221 NLRB 911, 914 (1975).

[26] 238 NLRB at 517.

[27] *Southern Household Products Co.*, 203 NLRB 881 (1971).

[28] Respondent merely funished a worksheet showing the biweekly changes in hourly rates and the computations are mine.

[29] Deductions for holidays were made by applying the applicable pay rate for the quarter in which a holiday occurred, also taking into consid-

Continued

The gross backpay of Langstaff was further reduced by taking into account the dates of the plant closings at New Hyde Park were he was employed as was done with regard to the two other discriminatees as set forth above who had been also employed at New Hyde Park. These closings further reduced gross backpay by $735.21 for the fourth quarter of 1976, $411.95 in the first quarter of 1977, $506.94 in the third quarter of 1977, $422.45 in the fourth quarter of 1977, and $225.19 in the first quarter of 1978. The final adjusted gross backpay of Langstaff is set forth in Appendix A, annexed hereto.[30]

Finally with respect to Langstaff, additions must be made to the interim earnings as reported in the backpay specification. Clearly Langstaff had additional earnings or payments as a result of his employment with Hyer Graphics and even before he was steadily employed there. Testimony as to this is somewhat confused and, in any case, there is never exactitude in these matters. I find as follows: Based on the testimony of Mrs. Hyer and Langstaff's admissions, he received certain payments prior to his beginning steady employment for maintenance and other work he sporadically performed for that company. Thus Hyer stated that she made payment to Langstaff of $345 in the fourth quarter of 1976, $213 in the first quarter of 1977, and $129 in the second quarter of 1977. Thus his interim earnings will be increased by those sums as set forth in Appendix A. Langstaff conceded that he received approximately $575 in expenses during the course of his employment at Hyer. For convenience, I have divided this amount during the three quarters in which he was employed so that his interim earnings will be increased for the third quarter of 1977 by $175, $200 for the fourth quarter of 1977, and $200 for the first quarter of 1978. In addition, Hyer testified to a payment made to Langstaff of $85 for some additional work in the fourth quarter of 1977, and Langstaff admitted receiving $575 for a Christmas bonus that year. So the interim earnings for the fourth quarter of 1977 will be further increased by $660. As a result of the changes reflected by all of the above adjustments, total net backpay of Glen Langstaff is found to be $29,619.22 as set forth by quarters in Appendix A.

V. THE REMEDY

For the reasons described above, I find that Respondent's obligations to the discriminatees herein will be discharged by the payment to them of the respective amounts set forth in Appendix A. Such amounts shall be payable plus interest to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[31] Interest shall accrue commencing with the last day of each calendar quarter of the backpay period on the amount due and owing for each quarterly period as set forth in Appendix A, and continuing until the date this decision is complied with, minus any tax withholding required by Federal and state laws.

The gross backpay figures in Appendix A are based on those set forth in the specification as amended at the hearing except where I have modified them as described above. The appendix states the figures for each quarter in which backpay is found to be due.

As found above, payments shall be made by Respondent to the pension funds of Local 282, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America and Local 28, Sheet Workers International Association, AFL-CIO, and the vacation fund of Local 28 as set forth for the discriminatees listed in Appendix B, C, and D, respectively.[32] Finally Respondent shall reimburse with interest the employees listed in Appendix E for the amounts of dues deducted pursuant to its contract with Local 137 Sheet Metal Workers.[33]

Upon the basis of the foregoing findings and conclusions, and upon the entire record in this proceeding, I hereby issue the following recommended:

ORDER[34]

The Respondent, Triangle Sheet Metal Works Division of P & F Industries, Inc., New Hyde Park, New York; Interstate Enclosure Mfg., Co., Inc., College Point, New York; and Modulaire Components Corp., its officers, agents, successors, and assigns, shall make the employees involved in this proceeding whole by payment to them of the following amounts together with interest to be computed in the manner set forth in the section of this Decision entitled "The Remedy," and continuing until the amounts are paid in full, but minus tax withholding required by Federal and state laws:

Henry Pinto	$ 5,037.07
Dissoondath Maharaj	7,470.00
Krishna Maharaj	7,630.00
John Cutrone	13,047.02
George Nieto	[35]048.88
Glen Langstaff	29,619.22

IT IS FURTHER ORDERED that Respondent pay the sum of $1,094.40 to the pension fund of Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen of America, on behalf of the claimants listed in

eration the adjusted pay rates for the last three quarters covered by the specification.

[30] Respondent had also urged that Langstaff,s gross backpay should be further reduced for the reason that, on certain days or periods, Respondent had reduced its work force of sheet metal mechanics to a level where Langstaff would not have been employed. In view of the Board's finding that Langstaff was able to operate all machines, and the fact that seniority did not exist as a factor in the Local 28 contract, and the insufficiency of evidence with respect to who were and who were not retained during these periods, I find that Respondent has not sustained its burden of proof as to this contention and I have made no further adjustments in the gross backpay.

[31] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[32] As noted the amounts of these contributions have been stipulated at the hearing to be correct as set forth in the backpay specification.

[33] The amounts of these payments and the payees thereof have been stipulated at the hearing. The amounts of dues to be remitted shall bear interest computed in the manner set forth above with respect to the discriminatees herein.

[34] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections shall be deemed waived for all purposes.

[35] This sum to be held in escrow in accordance with the terms set forth in the section of the Decision relating to Nieto.

Appendix B, and pay $4,464.75 on behalf of Glen Langstaff to the pension fund of Local 28, Sheet Metal Workers International Association, AFL-CIO, in accordance with the schedule marked Appendix C.

IT IS FURTHER ORDERED that Respondent pay $1,498.70 to the Local 28 vacation fund on behalf of Glen Langstaff, in accordance with the schedule marked Appendix D.

IT IS FURTHER ORDERED that Respondent make reimbursement to the employees listed in Appendix E, in accordance with the schedule set forth therein, with interest as computed in the manner set forth in the Remedy section, the dues and fees paid or checked off pursuant to Respondent's collective-bargaining agreement with Local 137, Sheet Metal Workers International Association, AFL-CIO.

APPENDIX A

NAME	*YR. AND QTR.*	*GROSS BACKPAY*	*INTERIM EARNINGS*	*EXPENSES*	*NET INTERIM EARNINGS*	*NET BACKPAY*
Henry Pinto	1976—3	$1,125	$466.55	$20.70	$445.85	$ 679.15
	1976—4	2,052	1,490.80	78.94	1,411.86	640.14
	1977—1	2,160	1,295.15	94.17	1,200.98	959.02
	1977—2	2,340	1,771.52	99.20	1,672.32	667.68
	1977—3	2,164	1,852.97	89.15	1,762.85	401.15
	1977—4	2,640	2,237.89	97.16	2,140.72	499.27
	1978—1	2,640	2,223.08	98.72	2,124.36	515.64
	1978—2	2,860	2,293.78	108.80	2,184.98	675.02
	1978—3	1,672	2,017.00	64.23	1,952.77	None
Total						$ 5,037.07
Bissoondath Maharaj	1977—3	$2,240	None	None	None	$ 2,240.00
	1977—4	2,860	$50.00	None	$2,810.00	2,810.00
	1978—1	2,420	None	None	None	2,420.00
Total						$ 7,470.00
Krishna Maharaj	1976—3	$ 872	None	None	None	$ 872.00
	1976—4	2,834	None	None	None	2,834.00
	1977—1	2,834	None	None	None	2,834.00
	1977—2	1,090	None	None	None	1,090.00
Total						$ 7,630.00
John Cutrone	1976—3	$477.60	None	None	None	$ 477.60
	1976—4	2,674.56	None	None	None	2,674.56
	1977—1	2,865.60	None	None	None	2,865.60
	1977—2	3,109.20	None	None	None	3,109.20
	1977—3	3,101.04	$1,176.65	$58.85	$1,117.80	1,983.24
	1977—4	3,153.60	2,344.00	105.40	2,238.60	915.00
	1978—1	3,258.72	2,344.00	107.10	2,236.90	1,021.82
Total						$13,047.02
George Nieto	1976—3	$932.80	*	*	*	$ 932.80
	1976—4	3,031.60	*	*	*	3,031.60
	1977—1	3,031.60	*	*	*	3,031.60
	1977—2	3,037.52	*	*	*	3,037.52
	1977—3	3,416.40	*	*	*	3,416.40
	1977—4	3,416.40	*	*	*	3,416.40
	1978—1	3,416.40	*	*	*	3,416.40
	1978—2	3,416.40	*	*	*	3,416.40
	1978—3	2,349.76	*	*	*	2,349.76
Total						$26,048.88
Glenn Langstaff	1976—3	$5,146.07	*	*	*	None
	1976—4	4,169.39	*	*	$345.00	3,824.39
	1977—1	4,696.23	*	*	213.00	4,483.23
	1977—2	5,275.18	*	*	129.00	5,146.18
	1977—3	4,815.93	*	*	2,200.00	2,615.93
	1977—4	4,581.01	*	*	3,460.00	1,121.01
	1978—1	4,507.17	*	*	1,879.92	2,627.25
	1978—2	4,655.16	*	*	None	4,655.16
Total						$29,619.22

* Interim earnings information not presently available.

APPENDIX B

CONTRIBUTIONS TO THE LOCAL 282 PENSION FUND

NAME	*YR. AND QTR.*	*NO. OF WEEKS*	*WEEKLY RATE*	*TOTAL*
Henry Pinto	1978—3	8	$34.20	$273.60
George Nieto	1978—3	8	34.20	273.60
Bissoonadath Maharaj	1978—3	8	34.20	273.60
Krishna Maharaj	1978—3	8	34.20	273.60
Grand Total				$1,094.40

APPENDIX C

CONTRIBUTIONS TO THE LOCAL 28 PENSION FUND ON BEHALF OF GLENN LANGSTAFF

YEAR AND QUARTER	*NO. OF WEEKS*	*WEEKLY RATE*	*TOTAL*
1976—3	13	$39.97	$ 519.61
1976—4	13	39.97	519.61
1977—1	13	43.58	566.54
1977—2	12.8	43.58	557.82
	.2	43.89	8.78
1977—3	13	43.89	570.57
1977—4	13	43.89	570.57
1978—1	13	46.05	598.65
1978—2	12	46.05	522.60
GRAND TOTAL			$4,464.75

APPENDIX D

CONTRIBUTIONS TO THE LOCAL 28 VACATION FUND ON BEHALF OF GLENN LANGSTAFF

YEAR AND QUARTER	*NO. OF WEEKS*	*WEEKLY RATE*	*TOTAL*
1976—3	13	$14.07	$ 182.91
1976—4	13	14.07	182.91
1977—1	13	14.18	184.34
1977—2	12.8	14.18	181.50
	.2	14.49	2.90
1977—3	13	14.49	188.37
1977—4	13	14.49	188.37
1978—1	13	14.90	193.70
1978—2	12	14.90	193.70
GRAND TOTAL			$1,498.70

APPENDIX E

REIMBURSEMENT OF DUES AND FEES PAID OR CHECKED OFF PURSUANT TO THE RESPONDENT'S COLLECTIVE-BARGAINING AGREEMENT WITH LOCAL 137, S.M.W.I.A., AFL-CIO

NAME	*1976 4Q*	*1977 1Q*	*1977 2Q*	*1977 3Q*	*1977 4Q*	*1978 1Q*	*1978 2Q*	*1978 3Q*	*TOTAL*
Satwan Bhinhar	$ 0	$ 0	$ 0	$ 0	$ 53	$ 38	$ 0	$ 0	$ 91
David Harrison	0	0	0	0	48	28	0	0	76
James Isaac, Jr.	0	0	34	0	0	0	0	0	34
Stanley Lester	25	0	0	0	0	0	0	0	25
Manuel Metauten	0	0	0	0	0	34	57	0	91
William Metauten	0	0	0	0	0	0	53	19	72
Jose Morales	53	57	37	27	27	27	27	18	273
Jose R. Morales	53	57	37	27	27	27	27	9	264
Brian Murley	53	19							
Jose Ocasi	0	0	0	34	57	19	0	0	110
Angel Pagan	0	0	62	51	27	32	27	9	208
Timothy Purvis	0	0	0	0	93	18	36	0	147
Nathan Richards	53	57	37	18	0	0	0	0	165
James Scarborough	68	27	27	27	18	0	0	0	167
Robert Schwartz	53	57	37	27	27	27	27	9	264
Henry Stansell, Jr.	53	38	0	0	0	0	0	0	91
Harold Stewart	53	57	37	27	27	18	0	0	219
Marc Tillman	0	0	72	56	37	18	0	0	183
William Veale	0	53	57	19	0	0	0	0	129
Robert Wagner	0	34	57	37	0	0	0	0	128
Brian Wicks	0	0	72	38	0	0	0	0	110
William Wilson	53	57	37	27	27	27	27	9	264
Total	$517	$513	$603	$415	$468	$313	$281	$73	$3,183